Common Carrier, Interconnection

Common Carrier, Interconnection, Carrier to Carrier

Common Carrier, Joint Use of Facilities

Common Carrier, Rates, Charges

Notice of Proposed Rulemaking adopted seeking comment on proposed rules and requirements to complement the adoption of access charges in Phase I of this proceeding, and the revised industry structure which will result from implementation of the Modification of Final Judgment in United States v. Am. Tel. and Tel. Co., 552 F.Supp. 131 (D.D.C. 1982).

--Market Structure (Phase III)

CC Docket No. 78-72

FCC 83-178

In the Matter of
MTS and WATS MARKET STRUCTURE, Phase III
Establishment of Physical Connections and Through Routes Among Carriers;
Establishment of Physical Connections by Carriers With Non-carrier Communications Facilities;
Planning among Carriers For Provision of Interconnected Services, and in Connection with National Defense and Emergency Communications Services; and
Regulations for and in Connection with the Foregoing

CC Docket No. 78-72, Phase III

NOTICE OF PROPOSED RULEMAKING

(Adopted: April 27, 1983; Released: May 31, 1983)

BY THE COMMISSION: COMMISSIONER FOGARTY ISSUING A SEPARATE STATEMENT; COMMISSIONER JONES ABSENT.

I. Introduction

1. Interstate and foreign communications provided by common carriers have historically been offered through electrical connection ('interconnection') of communications facilities operated by different entities. In decisions tracing virtually to the inception of the FCC in the 1930's, we have addressed carriers' obligations to interconnect their facilities with one another, and with non-carrier facilities (e.g., private communications channel facilities and terminal equipment). The development of Commission policies relating to carriers' interconnection obligations is complex. We summarize our current policies below, as they relate to this proceeding.

2. As a general proposition, carriers today are under a legal obligation to offer interconnection (both to other carriers, and to non-carrier facilities and equipment) under tariffs which are subject to FCC regulation. There are normally two basic dimensions to carriers' interconnection obligations. First, arrangements are required to compensate a carrier offering interconnection for use of its facilities in interconnected service. Second, physical, technical and operating arrangements are required to ensure that interconnection is feasible and workable, and that such interconnection does not create unacceptable levels of interference or

harm to service.

3. In view of the wide range of different service offerings which are subject to the Communications Act of 1934 as amended (the 'Act'), we have appropriately tailored our interconnection regulation in each instance to the specific carriers and services involved. For example, in the traditional telephone service field, compensation and physical arrangements for carrier-to-carrier interconnection historically were largely worked out by the industry itself without direct regulatory intervention. The FCC served primarily as a forum for complaints concerning issues which could not satisfactorily be resolved by the carriers through negotiation, and as a forum for resolving issues of jurisdictional cost and revenue apportionment ('separations') which had bearing upon provision of interconnected telephone services. With the advent of new entry by competitive common carriers, this Commission was called upon to take a more active regulatory role with respect to carrier-to-carrier interconnection for telephone services.

4. In the telegraph and record service field, under provisions of 1943 legislation permitting Western Union to acquire Postal Telegraph's facilities [FN1] , the Commission was required specially to regulate compensation and traffic division arrangements for traffic involving interconnection of Western Union's domestic facilities with the international facilities of international record carriers ('IRCs').

5. Other communications services have directly or indirectly involved interconnection of carriers' facilities to those of one another or to non- carrier facilities, including domestic satellite services, microwave radio services and video services. Here too, we have addressed the compensation and physical arrangements for such interconnection.

6. In some of the foregoing interconnection circumstances, we have merely clarified that a legal obligation to offer interconnected service exists, and have allowed the carriers themselves in carrier-initiated tariffs (or private contracts in some circumstances) to determine the arrangements for interconnection. This largely was the historic pattern for traditional telephone services provided jointly by the integrated Bell System and the Independent telephone companies. The involved carriers had great incentives to interconnect with one another and the details, while sometimes controversial, could usually be worked out by the involved carriers without regulatory intervention. The American Telephone and Telegraph Company ('AT&T') controlled (and controls) the great bulk of all telephone facilities in this nation, through direct control of long distance facilities by its Long Lines Department, and through indirect control through ownership of the associated Bell Operating Companies ('BOCs'). The BOCs access approximately 80% of the nation's telephones (and approximately 50% of the land area of the nation). Quite naturally, with this degree of direct and indirect control, AT&T largely could itself determine the evolution of telephone service, including the terms of interconnection. Moreover, even without such control, the research and development resources of AT&T (primarily in the Bell Telephone Laboratories and in Western Electric Company, and to some extent in AT&T's General Department) effectively could exercise strong influence over the evolution of telephone services, including interconnection.

7. Moreover, AT&T's strong influence over interconnection has not been limited to traditional telephone services, as many nontelephone common carrier services have required interconnection to AT&T or BOC facilities. For example, while Western Union itself has the right to construct long distance and local telegraph facilities (a right which predates the development of the telephone and of AT&T), in fact Western Union almost exclusively employs local telephone facilities to reach its subscribers. Similarly, while we have authorized the provision of specialized and domestic satellite services by new entrants since the late 1960's, because of spectrum congestion the carriers involved have been unable to bring their services directly to their subscribers in urban areas, and have been required to use local telephone facilities on an interconnected basis to reach their urban subscribers [FN2]. Again, given AT&T's predominant control of such facilities, AT&T has largely determined the evolution of these interconnection offerings, subject to regulatory

constraint.

8. Finally, the Act itself has, of course, affected this Commission's historic role with respect to interconnection. For example, all carriers engaged in the provision of interstate and foreign communications, including carriers which do so solely by virtue of interconnection, are subject to Sections 201 through 205 of the Act, which provisions include interconnection requirements. However, under Sections 2(b) and 221(b), the states and not the FCC regulate the offering of local (i.e., exchange) services to carriers' subscribers. Where carrier-to-carrier interconnection for provision of interstate and foreign services is involved, this Commission's authority over all interconnection arrangements, including compensation arrangements, is preeminent. But, where interconnection of carriers' local facilities to those of non-carriers is involved (i.e., for interconnection of terminal equipment, or of non-carrier private communications facilities), we have limited our role to one of assuring that interconnection is made available without discrimination, but without otherwise regulating local service compensation arrangements [FN3].

A. Changes Necessitating Action

9. A number of recent major events are causing us to examine comprehensively issues which bear upon carriers' interconnection offerings. First, we recently adopted a Third Report and Order in this proceeding, 93 FCC2d 241, FCC 82- 579, released Feb. 28, 1983 (hereafter, 'Third Report'), addressing access charges. In the Third Report, we examined the more competitive nature of communications, and unreasonable and discriminatory ratemaking practices which existed in connection with provision of interstate and foreign services on a direct and interconnected basis. We concluded that the historic traditional telephone industry revenue division practices must be replaced by a system of access charges (i.e., new arrangements for compensating carriers for use of their facilities when providing service on an interconnected basis). In part, this was the result of the increasingly competitive nature of telecommunications, and various forms of disparate treatment of service offerings and interconnection offerings made to other carriers and to subscribers by carriers. In part, this was a response to changes, discussed below, which are likely to flow from the revised antitrust decree governing AT&T and the BOCs. While our Third Report revises, on a nationwide basis, the compensation arrangements for interconnected service, it does not address the physical, technical and operational details of such interconnection. We believe that such matters are important, that they similarly should be addressed, and we propose to do so in these further proceedings.

10. Second, on August 24, 1982, the United States District Court for the District of Columbia entered a Modification of Final Judgment ('MFJ') in United States v. Am. Tel. and Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), 1982-2 Trade Cas. (CCH) ¶ 64,979, aff'd sub. nom., Maryland v. United States, ---- U.S. ----, 51 U.S.L.W. 3628 (U.S., Mar. 1, 1983), requiring AT&T to divest the BOCs no later than eighteen months from entry, and establishing constraints and obligations on the subsequent activities of AT&T and the divested BOCs. Bearing most importantly on provision of interstate and foreign services through interconnection is a requirement in Section II of the MFJ, and related Appendix B, that each BOC:

> provide to all interexchange carriers and information service providers exchange access, information access, and exchange services for such access on an unbundled tariff basis, that is equal in type, quality, and price to that provided to AT&T and its affiliates. As noted, the Third Report in this proceeding addresses the 'price' aspects of the BOCs' access and service provision obligations under the MFJ, but its does not address directly the physical, technical and operating arrangements for such interconnection. [FN4]

11. To some extent, these issues are addressed in the MFJ. For example, Appendix B acknowledges that equal treatment of access will require a phasing- in during

1984-86, and even thereafter in the case of smaller, older central offices upon an appropriate showing to the court. However, the MFJ is silent with respect to interconnection obligations which might govern AT&T after divestiture of the BOCs. Moreover, the exchange access provisions of the MFJ apply generally to provision of interconnection by the BOCs to 'interexchange carriers' and, except with respect to provision of information access, the decree is silent as to an obligation of the BOCs to offer interconnection to facilities of non-carriers. These interconnection issues are important, and have been addressed by this Commission in the past. For that reason, we believe it appropriate to clarify their treatment in the changing industry structure.

12. Third, the industry structure that would result from implementation of the MFJ would, through the provisions of the MFJ, create specifically detailed arrangements for access to the BOCs' subscribers (as noted, approximately 80% of the nation's telephones), but not to the subscribers of non-Bell Independent telephone companies. We believe that the purpose of the MFJ is consistent with regulatory policy of this Commission to create, on a nationwide basis, opportunities for competitive providers of interstate and foreign services to access their subscribers through interconnection with local telephone companies' facilities. The FCC and the courts have explicitly imposed such interconnection obligations on all local telephone companies, BOCs and Independents, and as noted we have addressed the compensation aspects of such interconnection in the Third Report herein.

13. In the altered industry structure of the MFJ, competitive interexchange carriers will have a detailed blueprint for interconnection to facilities for access to BOC subscribers (through the provisions of the MFJ), but not for subscribers in Independents' service areas. The object of the MFJ under the antitrust laws is creation of a competitive telecommunications marketplace nationwide, which is complementary to our mandate under the Act to ensure the availability of rapid, efficient communications with adequate facilities at reasonable charges, also on a nationwide basis. We have fostered the development of nationwide services in the past, and we believe it important to continue to do so upon implementation of the MFJ. For that reason, we propose generally to require, pursuant to our authority under the Act, that the Independent telephone companies offer interconnection (or in MFJ terms, exchange and information access) on a basis similar to that of the divested BOCs, in order that interstate and foreign services may be planned and offered on a reasonably uniform basis nationwide.

14. Fourth, the physical, technical and operational details of interconnection have increasingly become controversial in recent years, across a broad range of services and carriers. In some cases, we have been required to adopt specific regulations governing interconnection, e.g., regulations in Part 68 of our rules governing interconnection of terminal equipment, wiring, and protective apparatus. In other cases, we have adopted specific tariff- prescribing orders governing carriers' interconnection offerings, e.g., our original Carterfone decisions, [FN5] our 'piece out' decision, [FN6] and our decisions implementing the Record Carrier Competition Act of 1981. [FN7] In other cases, we have served as a forum for carriers themselves to negotiate interconnection arrangements. [FN8]

15. While we have no desire unnecessarily to extend direct and active regulation to activities which satisfactorily may be resolved without or with reduced regulatory intervention, it is clear that in a more fragmented and competitive telecommunications industry the interconnection 'ground rules' must be set at the outset, particularly inasmuch as interconnection often represents the sole means for competitive carriers (and providers of equipment and facilities) to access their customers. When Congress considered this issue recently in the context of enacting the RCCA it recognized that the record carriers' interconnection practices largely would determine the extent of competition. For this reason, the FCC was directed to prescribe record carriers' interconnection arrangements if the carriers could not themselves reach a voluntary agreement (which, in fact, they were unable to do). This principle is not limited to record services, and in our view applies to all interconnection in a more fragmented and competitive telecommunications environment.

16. Moreover, we believe that the developing pattern of AT&T no longer unilaterally controlling the planning and evolution of communications services in this nation, which pattern was developing as a consequence of competition and new entry, will likely be accelerated upon implementation of the MFJ. While AT&T will continue itself to control a very large portion of this nation's long distance facilities, over time it is likely that the scope of this control may well diminish as competition continues to develop, which will impair AT&T's ability itself to implement its planning decisions. Concommitantly, AT&T will be divested of the BOCs and will lose the ability directly to mandate implementation of much such planning.

17. Our policies are to promote the ability of competitive carriers (and non-carriers through use of private facilities) to innovate and to offer diverse communications services, a result which may have to some extent been impeded in the past by AT&T's control over telecommunications planning and evolution. Such innovation is a positive benefit of competition and new entry. However, we cannot fail to recognize that we have a statutory mandate to foster the development of nationwide (and worldwide) services; at some point, if communications becomes too 'balkanized' this mandate might be frustrated. Furthermore, communications is a capital-intensive industry which often involves relatively long planning periods for construction of new facilities (measured in years and in some cases in decades). AT&T in the past was a forum for amalgamation of various carriers' and subscribers' future communications needs for service, and for synthesis of appropriate advance construction plans. In the more competitive telecommunications industry which is evolving, and with divestiture by AT&T of the BOCs, an alternative advance planning mechanism to that traditionally performed by AT&T would appear to be required, and we are proposing in this proceeding to establish such a mechanism.

18. Finally, some forms of planning among carriers will be required to fulfill mandates of the Communications Act other than those related to nationwide service, most notably creation of administrative mechanisms and standby capabilities to support emergency communications bearing upon national defense and safety of life and property (national security and emergency preparedness, or 'NSEP', communications capabilities). Here too, AT&T has generally coordinated the telephone industry's role in such matters in the past, and upon implementation of the MFJ alternatives may be required [FN9]. In this Notice, we are proposing the creation of appropriate mechanisms to address advance planning of interconnection by carriers, and we envision that these mechanisms will be useful both for planning associated with provision of routine services, and for NSEP communications. With respect to the latter, it should be noted that we are proposing in this proceeding to create a framework for planning which might involve NSEP implementation, but we are not addressing the important issues of what planning will be required, and the voluntary and regulatory administrative and other mechanisms which may prove necessary to carry out such planning [FN10].

19. Furthermore, while we are proposing in this Notice creation of a framework for advance planning by carriers, we do so in full awareness that such planning among competitors (and potential competitors) must be limited to the absolute minimum consistent with achievement of our statutory mandate, to minimize any distortion of competition. As is discussed below, in addressing limited joint planning generally, and planning in behalf of NSEP communications specifically, we propose to be guided by analogous statutory provisions which have been in force since the early 1950's and which appear to achieve an appropriate balance between competition objectives and emergency planning objectives.

B. Summary of Proposals

20. We view this proceeding as complementary both to the Third Report addressing access compensation arrangements, and to the provisions of the MFJ addressing certain BOC interconnection obligations. With respect to the former, we are proposing to address the physical, technical and operational details of interconnection among carriers' facilities and between carriers' facilities and

those of noncarriers, generally through a proposed requirement that such details be addressed in carriers' exchange access tariffs subject to FCC regulation. With respect to the latter, we are proposing to extend to all carriers interconnection requirements analogous to those of the MFJ (the latter of which is limited solely to the BOCs), and to clarify that such interconnection obligations apply both to interconnection with other carriers' facilities, and to interconnection with non-carrier communications facilities [FN11] . Finally, we are proposing to create carefully circumscribed mechanisms for the planning by carriers for the provision of interconnected services.

II. Discussion of Specific Proposals

A. Interconnection by Independent Telephone Companies

21. As noted, if the MFJ is implemented in its present form, [FN12] the BOC facilities which offer access to approximately 80% of the nation's telephone subscribers will be required to be made available for interconnection under the exchange and information access provisions of the MFJ. These obligations are addressed variously in the MFJ, using concepts which are complementary to, but somewhat different than, concepts employed by the Commission in addressing analogous interconnection issues in the past. While we do not disagree with the structure envisioned by the MFJ, we believe it important to clarify the following discussion by identifying differences between the access structure of the MFJ and the jurisdictional split between intrastate offerings, and interstate and foreign offerings, in the Communications Act, as our proposals in this proceeding are pursuant to our authority under the Act.

1. Access Jurisdiction

22. Under the Act, the FCC is granted jurisdiction over interstate and foreign communications by wire and radio generally, but jurisdiction is reserved to the states over intrastate and exchange communications. Initially, under this jurisdictional split of regulatory authority, we regulated rates, tariffs and associated practices governing interstate and foreign services alone. However, often the same facilities are employed both for provision of interstate and foreign communications subject to our direct jurisdiction, and for the intrastate and exchange services over which state authority is reserved. In such circumstances, under developed case law [FN13] the FCC has plenary jurisdiction over interconnection even to exchange facilities, where such interconnection is required for interstate and foreign communications to proceed. However, we have not exercised jurisdiction over the rates for the intrastate toll and exchange offerings made over such facilities, and have limited our exercise of ratemaking jurisdiction to use of such facilities for interstate and foreign calling. In sum, under the Act there is a division of regulatory responsibilities between the Commission and the states with respect to ratemaking, and there is preemptive federal authority over the tariffs and associated practices governing interconnection. Where ratemaking authority is so divided, the division is between intrastate and exchange services on the one hand, and interstate and foreign services on the other.

23. The MFJ also establishes market definitions, for division of responsibilities and opportunities for AT&T and the BOCs. Rather than using the state line boundaries used primarily in the Act, the MFJ appears generally to seek a division between those local service undertakings which are implemented using exchange-like facilities, and those service undertakings which are implemented using long distance facilities which connect groups of exchanges with one another. The basic analytic distinction in the MFJ is between a species of exchange service (which may encompass more than the 'telephone exchange service' definition of Section 3(r) of the Act), and interexchange service. Under the MFJ, the BOCs are limited to provision of the

former (i.e., exchange-like services) and are not permitted to offer the latter (i.e., interexchange services). They are, however, permitted and indeed required to participate in the provision of interexchange services by others on an interconnected basis (deemed 'access' in the MFJ).

24. To describe the exchange-like offerings which may be made by the BOCs under the MFJ, and the concommitant interconnection ('access') obligations of the BOCs, the term Local Access and Transport Area ('LATA') has generally been employed to distinguish the exchange-like services of the MFJ from the traditional 'exchange' and 'toll' classifications used in regulatory statutes such as the Communications Act. [FN14]

25. While the BOCs are limited to provision of communications within such a LATA, and are prohibited from offering communications between LATAs, they are required to offer interconnection to others so that such others may provide inter-LATA and information services to the BOCs' subscribers. As is discussed below, we are proposing to impose on non-Bell telephone companies interconnection obligations patterned after those of the MFJ. However, in pursuing such an approach, we must be mindful of the differences between the jurisdictional divisions of the Act, and the interexchange/LATA distinctions employed in the MFJ. Interstate and foreign communications are subject to our jurisdiction regardless of whether the interexchange or LATA classifications of the MFJ are applicable to such communications. Conversely, intrastate toll and exchange communications are not (except with respect to interconnection to facilities used in common for such state-regulated offerings and interstate or foreign communications), even if within the competitive inter-LATA category of the MFJ (for which interconnection by the BOCs is mandated under the MFJ).

26. In sum, because the jurisdictional divisions of the Act are somewhat different than the distinctions of the MFJ, we must of necessity decouple from the interexchange/LATA distinctions of the MFJ. To the extent that a LATA crosses state boundaries, interstate services within such a LATA may be subject to full Commission regulatory authority (if such service is not 'exchange' service within the meaning of Sections 3(r) and 221(b) of the Act) [FN15]. Conversely, AT&T has proposed establishment of multiple LATAs in many states. Service between such LATAs, while 'interexchange' within the meaning of the MFJ and invoking the 'access' obligations of the MFJ, is intrastate toll service under Section 3(s) of the Act and not necessarily subject to full Commission jurisdiction. As a practical matter, it would be desirable for local telephone companies to interconnect with intrastate toll services on the same basis as they might with the interstate and foreign services subject to our direct jurisdiction. Such an approach would promote technical uniformity, and potentially might well contribute to telecommunications efficiency. Indeed, because unitary exchange facilities have historically been interconnected both with intrastate and interstate (and foreign) toll facilities on the same basis, disparate interconnection arrangements for the two groups of services may not be feasible. However, in this proceeding we shall address solely interconnection to exchange facilities to provide interstate and foreign communications. We do not at this time propose either expansion, or contraction, of our regulatory authority over such interconnection [FN16].

2. Access offerings of Independent telephone companies

27. We propose in this section to extend, pursuant to our regulatory authority under the Act, to non-Bell (Independent) telephone carriers interconnection obligations patterned after those which will govern the BOCs under the MFJ. Independent telephone companies currently are required to interconnect their exchanges with terminal equipment, with non-carrier communications facilities, and with competitive interstate carriers' facilities, pursuant to decisions of this Commission and of the courts [FN17]. However, as was the case of interconnection to the BOCs' facilities prior to adoption of the MFJ, the Independents' interconnection obligations have not been fully described and 'fleshed out' in the past. Rather, we

have reacted to specific complaints and have resolved controversies which have arisen [FN18].

28. What is altered in the environment of implementation of the MFJ is that under the provisions of the decree, competitive providers of interexchange services will in the future have a detailed 'blueprint' for interconnection to the BOCs' exchange facilities. In these circumstances, we believe it most appropriate, in view of our statutory mandate to promote the development of efficient and broadly available service on a nationwide basis, to ensure the establishment of a similarly detailed 'blueprint' for interconnection to the Independents' facilities. However, in so doing, we must be mindful that truly equal access to carriers' exchange facilities is not immediately possible in the BOCs' service areas, and that it may be less so in the Independents' areas because of intrinsic limitations of existing facilities. We discuss below the treatment in the MFJ of transition towards interconnection equality for the BOCs, and our proposals to address these issues analogously in the context of interconnection to the Independents' facilities.

29. The facilities of neither the BOCs nor the Independent telephone companies are homogeneous. Both include central offices which range from relatively older electro-mechanical (e.g., step-by-step, crossbar and panel) offices which are inflexible in their capabilities, to modern stored-program controlled electronic offices the capabilities of which may be changed (consistent with the limitations of the overall hardware) through software modifications. Both the relatively inflexible older offices and the more flexible newer electronic offices were designed in a monopoly environment to perform switching within a single supplier's central office and to perform switching to a single supplier of intrastate, interstate, and foreign long distance services. As interstate service competition was introduced in the recent past, an issue of significant controversy has concerned whether and to what extent other (interstate) long distance service providers may achieve access to telephone companies' central offices which is equal to that provided the traditional single supplier. It generally was claimed that equal access was not feasible because of the inherent design of the existing central office facilities, and for that reason interconnection has not been equal. Several remedies for this unequal access have been proposed, including a requirement that the inequality be minimized to the extent feasible, and proposals have been made that those who obtain better access should provide more compensation than others. We shall not address the latter remedy in these proceedings, as this 'compensation' issue has been addressed in the Third Report and Order. Rather, we shall confine our proposals to ones which minimize, to the extent feasible, any interconnection inequality.

30. The MFJ represents one approach to the difficult issues surrounding the inability of existing non-electronic central offices, as a practical matter, to support truly equal access. First, as was noted previously, the MFJ contains phasing-in procedures to provide the BOCs an opportunity to replace with newer stored-program controlled switches many of the older central offices to which equal access will be sought. Equal access overall is not required until 1986 under the phasing-in schedule of the MFJ. Second, the MFJ contains exception provisions under which the BOCs may refuse provision of equal access in older and smaller central offices. The specific mechanism of the MFJ is to create a defense for the BOCs for failure to make equal access available in such offices in the event that an interexchange carrier complains to the district court of a refusal to provide equal access.

31. Broader transitional procedures are also specified in the MFJ. For example, until such time as the nationwide numbering plan is revised, access to all long distance service providers under the MFJ need not be on the same dialing basis. A customer may be permitted to access one service provider without dialing extra digits, although extra digits may be required to access other suppliers' services. However, the BOCs must give each of their subscribers the opportunity to preselect which interexchange service provider will automatically be accessed without dialing extra digits. When the nationwide numbering plan ultimately is revised, access to all interexchange carriers' services is to be placed on the same basis.

32. We tentatively conclude that the approach of the MFJ as a general matter would be workable if applied to the Independent telephone companies. However, we must acknowledge that the Independents' central offices may be statistically weighted more towards the less flexible older electro-mechanical switching facilities than are those of the BOCs. In the MFJ, there is an exception mechanism applied to the BOCs for such cases. If the Independents' facilities more commonly would qualify for such exception treatment than those of the BOCs, the exception could well become the rule. The specific approach of the MFJ is to permit the BOCs to refuse equal access in these exceptional cases, and the BOCs are provided a defense before the district court. Such an administrative approach may be warranted for truly exceptional cases, but in our view it could prove unworkable if such situations were common, as may prove to be the case of the Independents' central offices.

33. It should be noted that access to interstate services is required to be offered pursuant to access tariffs which are subject to our regulatory review and jurisdiction, under principles adopted in the Third Report and Order, and as is discussed below, we are proposing that interconnection be offered generally in the access tariffs. In view of this, we believe it reasonable to utilize such tariffs as an appropriate administrative mechanism for addressing unequal interconnection offerings by Independents. We tentatively conclude that the issues of unequal access may best be addressed by adopting principles in this proceeding governing tariffs which are to be filed, and we propose to do so herein. As an express goal of this proceeding, we are seeking to address all major possibilities which may arise. But, to the extent that a given Independent telephone company might wish to raise special circumstances not previously addressed or accommodated in the principles which might be adopted, we believe that flexible treatment might be warranted, in view of the disparities in size, resources, and facilities, which may exist among various Independent telephone companies. Thus, a given company should be free to do so upon an appropriate showing that special treatment is warranted.

34. Specifically, we propose to adopt principles requiring that interconnection be offered by the Independents in their access tariffs, to be filed subject to our regulatory jurisdiction in accordance with the Third Report and Order. Furthermore, we propose to review such tariffs initially under principles patterned generally after the substantive 'access' requirements of the MFJ, as follows:

a. Access to existing stored-program controlled central offices. Programming of existing stored-program controlled central offices shall be modified, during a three year period [FN19], to support access to the services of all interexchange carriers which is equal in all respects, except that the minimum number of digits necessary to reach other than a carrier pre-selected by the subscriber may be utilized until such time as the nationwide numbering plan is changed. At such time as the central office modification is completed, existing subscribers shall be given an option to pre-select a specific interexchange carrier which is interconnected with the exchange, and no additional digits shall be required for the subscriber to reach the services of that carrier. Thereafter, new subscribers shall be given this choice at the time when service is initially arranged. In both cases, the selection may subsequently be changed by the subscriber at his or her option. Until such time as access is provided under this subparagraph, access shall be made available in accordance with subparagraph c. below.

b. Access to newly-installed stored-program controlled central offices. Within two years [FN20], all new stored-program controlled offices shall be initially deployed with the capabilities required under subparagraph a. above.

c. Access to existing electro-mechanical central offices (e.g., step-by- step, crossbar and panel). To the extent feasible, such offices shall be modified to offer the capabilities identified in subparagraph a. above, utilizing techniques such as interconnection on a tandem basis where common equipment is capable of supporting such operation. If ANI (automatic number identification) capabilities or subscriber billing capabilities are capable of being made available to more than one interexchange carrier, to the extent the same is requested by such carriers they

shall be made available in the same manner as is specified in the MFJ. If preselection of a particular carrier which might be accessed without dialing additional digits is not possible because of inflexibility of the electro-mechanical switching facilities, at minimum the exchange carrier must make available seven digit local telephone number access, with facilities and capabilities no worse than those provided in connection with PBX trunk service by the carrier. The carrier must make available transmission capabilities (as opposed to switching and billing) which are no worse than those provided the traditional interexchange service provider accessing its office, and it shall provide access, to the extent possible, which uses the minimum number of accessing digits, and which makes possible access from rotary dial equipment to the services of each interexchange carrier [FN21].

35. To ensure that the foregoing priciples, or alternatives which may be adopted as a result of these proceedings, are complied with, and to fulfill the substantive requirements of Sections 202(a) and 203(c) of the Act, as noted we are proposing to utilize the vehicle of access tariffs for carriers to make known the basis upon which interconnection witll be offered to interexchange carriers. However, we wish to minimize our regulatory role over such offerings, and to encourage, to the maximum extent feasible, voluntary resolution by the affected interexchange and exchange carriers of any disputes which may arise. We believe that one method of achieving this result might be to require the access tariff filings to indicate whether there has been precoordination of the filing with interexchange carriers, as a means of 'flagging' to our staff and to interested interexchange carriers the filings which will not be controversial. Furthermore, to the extent that exchange carriers may file joint or common access tariffs (i.e., throught the Exchange Carriers Association procedures in the Third Report and Order) it would be desirable to create a mechanism under which individual carriers might continue to concur in joint or common access tariffs, but still indicate their particularized interconnection offerings. We invite comment on procedural and administrative mechanisms to achieve these results, and which minimize, to the extent possible, the flow of unnecessary paper. In any event, it might be noted that the administrative framework which we are proposing to accomodate offerings of unequal access is somewhat different than the exception approach of the MFJ, but in view of the possibility that unequal access will be more common in the Independents' service areas than those of the BOCs, we believe that it better will comport with the requirements of Sections 202(a) and 203(c) of the Act [FN22] .

C. Interconnection of Exchange Carrier's Facilities With those of Non- Carriers, and Related Tariff Issues:

36. Our considerations here are related to, but somewhat different than, those involved in the previous section. There, we have clarified that existing interconnection policies remain applicable to Independent telephone companies, but we have, to some extent, proposed that additional interconnection capabilities which are not necessarily being made available currently be made available by the Independents in the future. Here, we are addressing solely existing interconnection obligations of the Independents and the BOCs, and we are proposing merely to clarify how these offerings are to be made to the public, as a matter of tariff policy, in the future.

37. Specifically, in the past the Commission has mandated interconnection to non-carrier communications facilities and premises terminal equipment through orders and rules in Part 68 of the Commission's rules which prescribed provisions in AT&T's interstate tariffs, and which also effectively prescribed the terms of exchange carriers' offerings. This use of our prescriptive authority over the interstate tariffs subject to our direct jurisdiction under the Act ensured that all telephone companies would be bound by our specific prescribed requirements, since all telephone companies concurred in AT&T's tariffs in the monopoly supply environment of the past.

38. However, telecommunications is changing. First, it is unclear whether local

telephone companies will continue to concur in tariffs of a single entity, AT&T, for the provision of interstate and foreign services in the future. An end-on-end tariff environment, with separate tariffs for the exchange access portion and for the long distance service portion, may become possible or desirable in the increasingly competitive telecommunications industry. Second, AT&T is no longer the sole long distance service provider. To maintain the obligation of exchange carriers to interconnect with non- carriers' facilities to facilitate interstate and foreign communications in a manner consistent with that of the past, it might prove necessary to prescribe terms of interstate and foreign service tariffs of entities other than AT&T. But, as competition develops, the present requirement for such tariffs might prove unnecessary.

39. While we believe that Part 68 of our rules will continue to govern exchange carriers, independently of whether they do or do not concur in interstate tariffs which reference or incorporate these rules, we conclude that any potential confusion on this point should be resolved now [FN23]. We have an appropriate vehicle to do so, namely the exchange access tariffs which will govern participation in interstate and foreign service of all exchange carriers, Independents and BOCs, and which will be subject to our direct jurisdiction. Accordingly, we hereby propose to require that interconnection to non-carrier facilities (i.e., communications systems and terminal equipment) be offered in each exchange access tariff, with an appropriate reference to Part 68 of our rules in each such tariff. As was the case in our discussion of analogous tariff requirements in para. 35 above, we invite comment on how best to implement such a requirement in a manner which minimizes the flow of unnecessary paper.

40. A requirement that interconnection to non-carrier facilities and terminal equipment be offered in exchange access tariffs also will have the effect of addressing several issues concerning the BOCs which arose during the course of the district court's Tunney Act proceeding [FN24], but which were not explicitly resolved in the MFJ. First, the MFJ as initially proposed would have barred the BOCs from providing terminal equipment. Since they could not do so, it had the effect of ensuring that others' terminal equipment could be interconnected with the BOCs' exchange facilities on a fair basis, else the BOCs could not provide service. But, as ultimately modified during the course of the Tunney Act proceeding, the MFJ now permits the BOCs to supply (but not manufacture) terminal equipment. Specific reference in the BOCs' tariffs to Part 68 of our rules will ensure that they do not discriminate in their treatment of others' terminal equipment as opposed to their own. Second, the MFJ contains provisions which address interconnection of other carriers' facilities and, to some extent, terminal equipment, to exchange facilities. It does not explicitly address interconnection with non-carrier communications systems or facilities. An offering of such interconnection in the BOCs' exchange access tariffs, in accordance with the Commission's decision in AT&T (ARINC), 77 FCC2d 1 (1978) and its decision interpreting the requirements of Part 68 of the rules, Memorandum Opinion and Order, 59 FCC2d 83, 86 (1976), will clarify to the public that the BOCs' established obligation to provide such interconnection will continue to be discharged [FN25, 26]. Such a clarification is similarly desirable for subscribers of non-Bell Independent telephone companies.

D. Planning

41. As was noted in the introduction to this Notice, forms of joint action by carriers, in some cases under this Commission's sponsorship, and in many cases by the carriers themselves, have historically proved necessary in telecommunications to achieve important objectives: development of industrywide technical standards, operating principles, administrative procedures and maintenance procedures; informal resolution of service and maintenance disputes which may arise where there is divided responsibility for elements of a joint through service; development of standby procedures and facilities to support extraordinary communications requirements (e.g., NSEP communications); and development of appropriate forecasting and circuit requirements amalgamation procedures to facilitate planning for

construction of new facilities with relatively long 'lead' times. Because of AT&T's preeminence, many of these activities were performed or sponsored by AT&T, and because of its ownership of the BOCs, AT&T was able to ensure that the results of these activities would be carried out.

42. With divestiture of the BOCs, and the more competitive nature of telecommunications, it is apparent that dominance over such activities by a single firm, AT&T, is neither likely nor desirable. Concerted action by competitors may, if carried too far, be anticompetitive and inimical to the pro-competitive policies of this Commission. However, many forms of planning are not necessarily anticompetitive, and indeed may be desirable. Moreover, the fact is that such planning has proceeded for over a century, and immediate discontuance of all such planning could disrupt the provision of service to the public.

43. We propose below to establish limited joint planning procedures to ensure continued attainment of important efficiency, service, defense, and emergency communications objectives under the Act, but in full awareness of the requirement that such activity not frustrate our pro-competitive policies. We shall carefully consider the competitive implications of any planning which is to be sanctioned, and we make tentative proposals below which, in our view, will ensure that anticompetitive problems will not arise [FN27].

1. Basis for Proposing Limited Joint Planning

44. Limited joint planning among exchange carriers for interconnection arrangements offers several advantages as a means of assisting carriers in meeting interconnection obligations and carrying out the purposes of the Act. [FN28] Joint planning is an effective means of standardizing equipment and system design and functions at the point of interconnection (but not necessarily the internal design of equipment and facilities). This standardization, and the resulting compatibility among equipment and systems used by different carriers and other users, promotes the efficient operation of the telecommunications system. This efficiency has attendant advantages for subscribers to carrier services. As we previously have noted, planning among carriers also is an important means of securing appropriate standby communications capabilities to serve the NSEP needs of the Nation. [FN29]

45. The development of competition among long distance carriers raises the possibility that joint planning among exchange carriers for interconnection with the competitive long distance carriers will become increasingly necessary in order to ensure efficient operations. As the number of competing carriers increases, it is possible that the risks of inefficiency also will increase if the various carriers employ incompatible designs and functions for interconnected equipment. [FN30] should be noted, however, that any such inefficiencies would diminish (and the need for joint planning consequently could decrease) if technological developments evolve in the direction of telecommunications systems which operate independently, and for shich interconnection is neither necessary nor desirable.

46. In the past, AT&T has been the locus of joint planning for interconnection arrangements. AT&T's control of the BOCs, and its working relationships with the Independent telephone companies, has enabled AT&T to initiate and oversee joint planning in a manner which has been sufficient to mitigate any need for this Commission to take an active role in providing structures for this planning. Because of this preeminence AT&T has also largely served as a locus for accommodation by the traditional telephone carriers of the needs of other carriers as well (e.g., specialized carriers, record carriers). AT&T's role, however, necessarily will be altered by the divestiture to be carried out in accordance with the MFJ. [FN31] Although the long-term effects of the divestiture on joint planning cannot be assessed with certainty, it is reasonable to conclude that short-term dislocations are likely to occur if joint planning is disrupted during the period following divestiture. Further, since AT&T is proposing that the divestiture be effected on January 1, 1984, [FN32] there may not be sufficient time for carriers to work out

planning arrangements to replace the existing structure, in the absence of action by this Commission.

47. Although there are benefits to be gained from joint planning for interconnection arrangements, it should be recognized that joint planning poses two sets of potential risks. Product and service innovation generally can be expected as a by-product of competition, [FN33] and innovation usually results in benefits to the public in the form of quality improvements and costs reductions. If, however, joint planning for interconnection results in excessive standardization of design and operational specifications at the point of interconnection, then this very success could have a dampening effect on innovation. As connectivity tolerances are narrowed through standardization, design and operational variations which would result from innovation could become dysfunctional. Thus, the incentives for innovation could diminish to the extent that carriers and equipment vendors opted to take advantage of the benefits of standardization. [FN34] It must be stressed, however, that the joint planning we are proposing involves the achievement of standardization and compatibility only at the point of interconnection. Innovation in overall system design and operation, which would be fostered by competition among long distance carriers and among equipment vendors, should not be seriously affected by this limited form of standardization in most cases. However, there might be circumstances in which a particular innovation (e.g., digitized voice transmission at less than 64 kbits/sec) might be adversely affected by a standard which did not accommodate that innovation. We are interested in comments on how best to balance this potential effect in formulating our approaches herein.

48. A second set of potential risks posed by joint planning involves the possibility of abuse of the joint planning mechanism. Various types of anticompetitive practices--including price-fixing, market and capacity allocation, exclusionary standard-setting--can be germinated through joint planning activities. The rules proposed here will seek to confront these potential abuses and establish requirements and constraints intended to prevent them from occurring. [FN35]

49. A decision regarding the efficacy of joint planning for interconnection involves a balancing of the advantages and risks which we have outlined. It is our tentative conclusion that the advantages to be gained from joint planning, as well as the short-term dangers posed by disruptions in this planning, outweigh the potential risks involved and point toward a conclusion that joint planning under the aegis of this Commission will serve the public interest.

2. Authority of Commission To Require Limited Joint Planning

50. Federal agencies, in the absence of specific statutory prohibitions, have authority to require concerted action on the part of private entities subject to their regulatory authority if this concerted action is necessary or appropriate to further the statutorily established goals and functions of the agencies. Such authority, in fact, has been exercised by this Commission in this proceeding. [FN36] Section 222 of the Act, as amended by RCCA, provides a recent example of the imposition of negotiation requirements upon carriers. [FN37] Negotiations to arrive at the Docket No. 20099 Settlement Agreement and thereafter [FN38] and the ENFIA negotiations [FN39] are further examples of carrier negotiations conducted under our aegis.

51. There is ample authority in the Act to support the establishment of joint planning requirements by this Commission. Section 1 of the Act, 47 U.S.C. § 151, provides that this Commission was established '[f]or the purpose of . . . [making] available . . . to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . ..' Since we perceive the goal of joint planning for interconnection to be the promotion of efficiency, with the resulting provision of adequate facilities at reasonable charges, we conclude that a rulemaking to provide for joint planning is within our statutory authority. A further basis for

Commission action is found in Section 201(a) of the Act, 47 U.S.C. § 201(a), which requires carriers to furnish service upon reasonable request, to establish physical connections with other carriers, and to establish through routes. Joint planning for interconnection arrangements can be viewed as an appropriate means for enabling carriers to comply with these requirements of Section 201(a). Section 201(b) of the Act, 47 U.S.C. § 201(b), requires all carrier practices relating to the provision of service and the establishment of physical connections and through routes to be just and reasonable. Furthermore, certain communications facilities require authorization by this Commission under the provisions of Section 214(a) of the Act, 47 U.S.C. § 214(a). Limited joint planning by carriers under our aegis has proven useful as a means of aiding us in carrying out our responsibilities under Section 214(a). Moreover, Section 214(d) of the Act, 47 U.S.C. § 214(d), authorizes this Commission to require any carrier 'to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier . . ..' It is our view that this Commission can further the goals expressed in Section 214(d) by establishing joint planning procedures. [FN40] Also, Section 218 of the Act, 47 U.S.C. § 218, mandates that we be informed of the manner in which service is rendered; planning under our sponsorship is an appropriate mechanism to discharge this Section 218 mandate. Further, Section 4(i) of the Act, 47 U.S.C. § 154(i), grants this Commission broad authority to carry out its responsibilities under the Act. [FN41] We conclude that the establishment of joint planning procedures by this Commission falls within the ambit of the authority established in Section 4(i) of the Act. Finally, we believe that the flexibility accorded us in ordering our procedures under Section 4(j) of the Act, 47 U.S.C. § 154(j), permits us to sponsor activity of this nature to carry out the express goals of the Act. We conclude that limited joint planning is, as constrained below, an appropriate mechanism for ensuring the just and reasonable administration of interconnection arrangements.

3. Structure for Limited Joint Planning

52. It is our tentative belief that the carrier association established by the Third Report [FN42] affords an appropriate structure for limited joint planning. The Third Report found that a carrier association is necessary to prepare and file joint tariffs and to administer distributions from a joint revenue pool because AT&T cannot be called upon to perform such a role in the post-divestiture environment. The Third Report further found that action by this Commission to mandate creation of the association is necessary because there is not sufficient time to permit institutional arrangements among carriers for these purposes to develop spontaneously. Under the framework established in the Third Report, the association will be comprised only of exchange carriers participating in access charge revenue pools administered by the association. This Commission subsequently will adopt a supplemental order establishing membership rules providing for appropriate representation of different classes of exchange carriers. [FN43] The association is barred from engaging in any activity not related to the preparation or filing of access charge tariffs or the collection and distribution of access charge revenues, unless the additional activity is approved by this Commission.

53. We tentatively conclude that the association established by the Third Report is a readily available mechanism for joint planning, and that there is no need to establish some form of parallel organization the membership of which would overlap extensively with the membership of the established association. The association already will be involved with access issues as a result of the functions assigned to it by the Third Report, and it thus becomes logical to extend these functions to include the administrative, technical, and operational aspects of interconnection planning which are involved in this Notice. We propose to impose procedural requirements and guidelines which will have application only in the context of the joint planning activities of the association and not in the context of other activities carried out in accordance with the Third Report, but it is our preliminary belief that this bifurcated approach to the operational rules of the association should not hamper its ability to carry out any of the functions assigned to it. Further, the fact that the association will be performing tariff preparation

and revenue collection and distribution functions in addition to the joint planning functions we are here proposing will not, in our preliminary view, increase the potential for the development of anticompetitive practices to which we previously alluded. [FN44] In this respect it should be emphasized that the interexchange carriers which are in direct competition will not be members of the association. Their projections and other information will be considered by the association for planning purposes, but, as is discussed below, we propose to prohibit such information from being disseminated except in amalgamated form.

54. We tentatively have concluded that the membership of the association, as established in the Third Report, is suitable for the joint planning functions which we envision. It is our preliminary belief that it is appropriate to exclude representatives of this Commission, representatives of State public utility commissions, members of the general public, and interexchange carriers from membership on the association for joint planning purposes. However, as will be discussed subsequently, [FN45] it is our tentative belief that this Commission should be assigned responsibilities and functions regarding the joint planning activities of the association which are designed to ensure that the association does not operate in a manner which frustrates the goals and policies which we are establishing. This result can be achieved without requiring that this Commission be given membership on the association. A main objective of our proposals is to ensure the continuation of joint planning activities regarding interconnection which presently are being carried out on an informal basis, largely through the efforts and under the auspices of AT&T, but which may be seriously disrupted in the post-divestiture period if we do not act to establish a structure for planning. We are preliminarily satisfied with the assumption that this continuity can be achieved without carving out a direct role for this Commission in the planning functions of the association. It does not seem to us to be appropriate to propose that this Commission should take an active policymaking or management role in the planning negotiations of the association--such a role appears to be unnecessary and would constitute a departure from the manner in which joint planning historically has been carried out. [FN46]

55. As to representation of State public utility commissions and the general public on the association for joint planning purposes, we tentatively reiterate our finding in the Third Report that the interests of the State commissions and the public are amply protected by safeguards already established in the Act. [FN47] With respect to public representation, it is our further view that the technical nature of the interconnection planning deliberations to be conducted by the association are such that a direct decision-making role for representatives of the general public does not seem apt. Membership for interexchange carriers on the association for joint planning purposes, in our tentative view, would pose special problems sufficient to warrant the conclusion that interexchange carriers should be excluded from membership. At least for the foreseeable future, local exchange service and exchange access will be provided by exchange carriers which are regulated monopolies in their service areas. [FN48] This fact in itself lends credence to the argument that an association of local carriers for joint planning purposes will not pose serious anticompetitive risks. Stated another way, anticompetitive conduct by local carriers will increase in likelihood only as competitive forces are sought to be introduced in the local exchange and local access markets. The situation with respect to interexchange carriers, however, is different. The interexchange market is increasingly becoming subject to competition. [FN49] Interexchange carriers operating in a competitive environment might sieze upon their membership on the association as a device for effecting exclusionary and other anticompetitive interconnection practices. Since interexchange carriers obviously are affected by interconnection planning, it is important that they be allowed to play some role in this planning. [FN50] It is our preliminary belief, however, that this role should stop short of membership on the association. [FN51]

56. We seek comments on the following issues regarding the structure for joint planning arrangements and our proposal thereupon set out in this section. First, should a framework other than the association established by the Third Report be utilized for this joint planning? Are there alternative existing structures which

could be better utilized for this purpose? Would it be more appropriate to establish a new organization for the exclusive purpose of engaging in joint planning for interconnection arrangements? Second, if the association established by the Third Report is used for this joint planning, should we modify our tentative conclusions regarding representation of State public utility commissions, the general public, and interexchange carriers as members of the association? We also request comments regarding whether other groups should be represented as members of the association for joint planning purposes, or, in the alternative, whether and how others might best participate in the planning process, but short of actual membership. Finally, we would like the parties to comment upon whether we should modify our tentative conclusion regarding membership of this Commission on the association with respect to its planning activities.

4. Functions of Association [FN52]

57. It is our preliminary belief that the joint planning functions of the association should be grouped into three areas. First, the association should conduct advance planning regarding administration of interconnection procedures, technical standards for the provision of interconnection, design and operational standards relating to interconnection equipment and systems, and related administrative and maintenance procedures. The primary purposes of this planning should be to make adjustments to interconnection processes on an ongoing basis in order to achieve operational efficiency, to promote nationwide compatibility, and to anticipate future needs and problems so that adjustments can be planned and carried out on the basis of these projections. It should be stressed that it is our tentative conclusion that these functions of the association should be limited to the point of interconnection. Interexchange network design and planning will be beyond the scope of the association's activities. Second, it is our tentative view that the association should be involved in the collection of information to be used in connection with short- and long-term forecasting regarding patterns of interconnection demand and construction needs. Necessary exchange facilities to meet interexchange carriers' needs often require long periods for construction and deployment. The efficiency with which exchange carriers are able to provide interconnection services is in some measure dependent upon the carriers' accuracy in assessing trends in the level and nature of demand for these services. The rapid pace of technological developments in this field, and the impact of these developments on interconnection demand, places a premium upon the need for effective forecasting. It is our preliminary belief that the effectiveness of this forecasting can be maximized if it is performed on a central basis.

58. The structure of the association would enable it to collect and collate data from exchange carriers, to review and analyze this information, and to arrive at planning decisions based upon these analyses. It is our tentative view that the association should develop alternative plans for responding to projected demand, study these options in order to select the most appropriate plan, and carry out reviews of the implementation of the selected plan. In this way, interconnection procedures and standards would be responsive to changing needs. However, we propose to restrict dissemination to interexchange carriers of forecasing information except in amalgamated form in order to ensure that the projections themselves do not become a mechanism for impermissible concerted action by the competitive interexchange carriers. [FN53] Third, it is our preliminary view that NSEP planning functions could be carried out by the association. [FN54] Concern has arisen over a claim that the divestiture, and the attendant changes in AT&T's emergency planning role, [FN55] could result in the disruption of telecommunications functions which are deemed critical to the Nation's defense ane emergency communications capabilities. [FN56] Although the MFJ requires the BOCs to establish a point of contact for NSEP purposes, [FN57] it is our tentative view that the MFJ requirements should be supplemented, to the extent necessary or desirable, by a limited planning process involving all exchange carriers, to minimize disruptions in emergency communications by all involved sectors of the industry.

59. Furthermore, we propose that explicit restrictions be placed upon the functions of the association in order to eliminate any potential anticompetitive problems which might be an outgrowth of the association's activities. The Third Report achieves this result in a general sense by barring any additional activities by the association unless these activities have been approved by this Commission. [FN58] It is our preliminary conclusion that the rules of this Commission also should specify that the association may not, in connection with the planning activities addressed in this Notice, collect or share any information relating to pricing [FN59] or procurement, [FN60] and that the association may not take any action which is intended to allocate, or has the effect of allocating, any markets or facilities. These rules should provide that information which the association is authorized to collect and collate may be disseminated to interexchange carriers only in amalgamated form in order to prevent any possibility of anticompetitive collusion by these carriers. Further, these rules should require that interconnection standards and procedures must be established by the association on an objective basis, so that the standards and procedures do not amount to anticompetitive devices for excluding potential competitors. [FN61]

60. When respect to the functions of the association, we request the parties to comment on the nature and scope of the functions which we have outlined, with particular attention to whether these functions are necessary or appropriate functions for the association to perform. We also seek comment regarding whether other functions should be assigned to the association, either in lieu of or in addition to the functions we have outlined. We further would like the parties to comment on the limitations we tentatively have decided to place upon the activities of the association. Again, we seek comment regarding whether these limitations are necessary or appropriate and regarding whether other limitations should be established. Finally, we request comments regarding the nature of the relationship, if any, which should be established between the association, the BOC point of contact for NSEP purposes to be created under the MFJ, and other carriers' administrative elements with NSEP communications responsibilities. In this regard, we seek comments on the following questions: What should be the nature and extent of coordination between these entities? Should any such entity have any 'veto' authority over the decisions of the others?

5. Procedures of Association

61. It is our tentative view that procedures applicable to the operation of the association should serve three primary objectives. First, the public should be given ample opportunity to observe the processes of the association and to examine the decisions and other actions of the association. Second, this Commission should reserve sufficient authority to oversee the operations of the association in order to ensure that actions taken by the association are consistent with the policies of the Act and any rules we may adopt herein. And third, sufficient flexibility should be incorporated in the procedures of the association to enable it to carry out its planning functions efficiently and effectively. It should be noted that the procedures which we tentatively are proposing, in seeking to meet these and other objectives herein, have been drawn in large measure from provisions contained in Section 708 of the Defense Production Act of 1950, 50 U.S.C. App. § 2158, which addresses analogous issues.

62. We propose that the association be governed by bylaws submitted to, and approved by, this Commission. We propose that the chairman of the association be selected from among its membership and serve for a term to be fixed by the members in the bylaws of the association. Meetings for planning purposes will be held at the call of the chairman or upon the request of a majority of the membership, and reasonable public advance notice of meetings must be given by the association. The association will have the discretion to establish permanent or ad hoc subcommittees to be responsible for various aspects of the association's planning activities. This Commission will have authority to monitor the activities of the association by sending an official representative to its meetings. The Commission representative

will have authority to require the association to terminate any particular proceeding if he concludes that actions taken in the proceeding, or the manner in which the proceeding is being conducted, violate the Act or the rules established by this Commission. We propose that the representive may exercise this authority without being required to obtain any further approval from the Commission. If the representative terminates a meeting, then the association may not reconvene to discuss the topic which caused such termination without the express prior approval of the Commission. [FN62] Meetings of the association will be open to the public, unless the association determines (by majority vote of those members of the association who are present) that matters to be discussed at the meeting are within the purview of matters described in paragraph (1), (3), or (4) of subsection (b) of Section 552 of Title 5, United States Code. [FN63] The association will be required to keep minutes of its meetings. These minutes must be filed with this Commission and made available for public inspection, except that information in the minutes pertaining to matters described in paragraph (1), (3), or (4) of subsection (b) of Section 552 of Title 5, United States Code, would not have to be disclosed to the public. [FN64]

63. The procedures we are proposing also would require the association to permit interexchange carriers (including voice and data communications carriers) and other users of exchange access facilities to make written and oral presentations to the association regarding interconnection planning matters under consideration by the association. [FN65] The rules we are proposing will not specify the extent to which the association must take these presentations into account in arriving at planning decisions, but we note that it is not our intent that participation by interexchange carriers and other users force the deliberations of the association to take on the strictures of an adversary proceeding. Rather, it is our tentative view that these carriers and other users will be in a position to assist the association, and to affect the decisions of the association in a positive way, through the provision of information and comments to the association. It is our opinion that, by barring interexchange carriers and other users from playing an active role in the decision-making of the association, the proposed rules will mitigate the types of anticompetitive problems we previously have discussed. [FN66] Furthermore, it would appear that equipment manufacturers would have an interest in, and the ability to contribute to, deliberations concerning technical standards. Thus, we would propose that such entities also have the right to make presentations to the association with respect to standards.

64. The proposed rules also would require the association to disseminate information regarding its interconnection decisions and policies in a manner which is sufficient to keep the industry and the public adequately informed of association actions. [FN67] Further, we propose that the association be required to file planning decisions and related information with this Commission. [FN68]

65. We request parties to comment generally regarding the procedural requirements we are proposing, and we would like the parties to suggest additional or alternative procedural requirements. We also seek comments regarding the following specific issues: First, is the role we have outlined for this Commission appropriate, or should it be modified? Should the Commission role be narrowed (e.g., by eliminating the monitoring function)? Or should the Commission role be expanded (e.g., by making a Commission representative a member of the association, by authorizing this Commission to screen interconnection planning topics in advance of meetings, or by barring planning decisions from taking effect unless they specifically are approved by this Commission)? Second, should the proposed rules require this Commission to oversee the implementation of association decisions after they have been made? This Commission has general authority under the Act to prohibit interconnection policies and actions which are not consistent with the Act, but we request comments regarding whether the proposed rules should formalize this function of this Commission by setting up specific monitoring procedures and requirements. Third, should modifications be made in the role established for interexchange carriers, other users of exchange access facilities, and equipment manufacturers, under the proposed rules? For example, should these interests be given any decision-making authority regarding the planning activities of the association? [FN69] Should these interests

be permitted to propose or to initiate planning topics for consideration and action by the association, or should their role be limited to commenting upon planning activities initiated by the association?

66. Fourth, should the role of the general public in the proceedings of the association be expanded, with due regard to procedures to accommodate classified information (e.g., by permitting members of the public to make oral or written presentations, or both)? Or should the public role be restricted (e.g., by barring public attendance at association proceedings)? Fifth, we invite comment regarding whether the proposed rules should address informal planning contacts and other arrangements among exchange carriers. Up to this point, our discussion has focused on more formal carrier arrangements for interconnection planning through the association established in the Third Report and through subcommittees which may be established for planning purposes by the association. We note, however, that exchange carriers engage in a variety of informal contacts relating to interconnection planning, [FN70] and it is appropriate to conclude that these contacts may make important contributions to the efficiency of interconnection planning. We are interested in receiving the views of the parties regarding whether it is appropriate for the proposed rules to be applicable to these informal contacts and, if so, the nature of procedures and requirements which would have the most utility in this informal setting. In this regard, we should note our particular concern that these informal contacts should not become a vehicle through which competing interexchange carriers obtain information which may be used in connection with their competitive activities. Finally, we seek comments regarding the proposed requirement that minutes of association meetings be kept and filed with this Commission. Specifically, would such a requirement prove to be an undue constraint upon planning negotiations? Or should the requirement be strengthened (e.g., by requiring transcripts, rather than minutes) as a means of further ensuring against anticompetitive activities?

6. Antitrust Considerations

67. It is our conclusion that the interconnection planning activities and the organizational structure for this planning which we are proposing in this Notice are consistent with the antitrust laws. The Third Report, in fact, already has rejected arguments that the access charge functions of the association pose antitrust problems, noting that '[t]he Sherman Act does not prohibit concerted activities, it merely prohibits concerted activities that are likely to produce an unreasonable restraint of trade.' [FN71] It has been our intent in fashioning our proposals herein to assign to the association functions which are important for the provision of efficient planning but which will not create a basis for anticompetitive conduct. We also have proposed restrictions upon association activities as a means of protecting competition. [FN72] Finally, we have proposed procedural requirements which will act as a further bar against anticompetitive activities. It also should be noted that, although it is true that competition is an important factor which should be given weight in the administration of the Act, [FN73] this Commission also is required by the public interest standards of the Act to consider factors other than competition, such as the efficiency of the communications network, the provision of reliable service to the public, and the future needs of carriers and users. [FN74] In sum, we believe that we have sufficient authority under the Act to sponsor procedures as outlined, and that use of such procedures would not raise antitrust issues. Of course, in formulating final rules and requirements herein, we will give weight to the views of the Attorney General of the United States regarding any aspects of the association's activities which may have anticompetitive effects.

IV. Regulatory Flexibility Act Analysis

68. We have found at an earlier stage of this proceeding that the Regulatory

Flexibility Act is not applicable to this proceeding because no local exchange carrier falls within the definition of 'small entity' for purposes of that Act. Third Report at paras. 358-62. We noted in the Third Report, however, that the policy objectives of the Regulatory Flexibility Act are also encompassed in Sections 2(b) and 203(a) of the Communications Act of 1934, the provisions of which are intended to relieve many small telephone companies from various reporting and other requirements established in the Communications Act. Any recordkeeping and other requirements (e.g., tariff requirements) imposed by any final decision in this proceeding would be applicable to all exchange telephone companies, regardless of their size. See paras. 27-40, supra, for a detailed discussion of the proposed requirements. However, it is important to note that in fashioning these proposals, we have been cognizant of the differences in resources available to the BOCs and the larger Independent telephone companies, on the one hand, and the smaller Independents, on the other, and we have sought to tailor our proposed requirements to accommodate the limited resources of the smaller companies. We specifically request small Independent telephone companies, their trade associations and others which may represent their interests, to comment on the implications of these requirements in the light of their operations, and to propose appropriate administrative mechanisms which will minimize the flow of unnecessary paperwork.

V. Ordering Clauses

69. IT IS HEREBY ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 214, 218 and 403 of the Communications Act of 1934, and 5 U.S.C. § 553, That NOTICE IS HEREBY GIVEN OF THE PROPOSED ADOPTION OF RULES IN PART 69 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS, in accordance with the discussion and delineation of the issues and the specific proposals made herein.

70. IT IS FURTHER ORDERED, pursuant to Section 1.419 of the Commission's Rules, 47 C.F.R. § 1.419, That an original and five copies of comments may be filed with the Secretary, Federal Communications Commission, Washington, D. C. 20554 on or before August 8, 1983, and that replies may be filed on or before October 7, 1983. In reaching its decision in this proceeding, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

71. IT IS FURTHER ORDERED, pursuant to Section 1.2 of the Rules of the Commission, 47 C.F.R. § 1.2, and authority delegated under Section 0.291 of the Rules of the Commission, 47 C.F.R. § 0.291, That meetings among carriers, under the aegis of the Common Carriers Bureau, MAY CONTINUE DURING THE PENDENCY OF THIS PROCEEDING pursuant to the decision of the Commission in American Telephone and Telegraph Company (Offer of Facilities for Use by Other Common Carriers), Docket No. 20099, 52 FCC 2d 727, 733 (1975).

72. IT IS FURTHER ORDERED, That this proceeding shall be continued as a non-restricted notice and comment rulemaking proceeding. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that ex parte contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted. In general, an ex parte presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff, which addresses the merits of the proceeding. Any person who submits a written ex parte presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral ex parte presentation addressing matters not covered fully in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral

presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 C.F.R. § 1.1231.

73. And, IT IS FURTHER ORDERED, That the Secretary shall cause a copy of this Notice of Proposed Rulemaking to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION
WILLIAM J. TRICARICO, Secretary
SEPARATE STATEMENT OF COMMISSIONER JOSEPH R. FOGARTY

In Re: MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, Notice of Proposed Rulemaking on Interconnection in the Wake of Access Charges and Implementation of the MFJ.

I am pleased to see that the Regional Bell Operating Companies and the major Independent exchange carrier companies have already begun to form an association of exchange carriers for the specific purpose of structuring, planning, and formulating telephone network standards in the coming post- divestiture era. [FN75] Such an industry planning organization is, in my judgment, absolutely vital for this nation's national defense and emergency preparedness, as well as the basic integrity and viability of our national telecommunications network. I am also pleased that this Notice promises that the Commission's public interest imprimatur will be given to an industry planning body in the performance of its appointed interconnection and exchange access tasks.

FN1 These provisions were formerly in Section 222 of the Act, and were recently supplanted by the Record Carrier Competition Act of 1981, P.L. 97- 130, 95 Stat. 1687, Dec. 29, 1981 ('RCCA').

FN2 Such facilities have been termed 'entrance facilities.'

FN3 See, e.g., Carterfone, 13 FCC2d 420, recon. denied, 14 FCC2d 571 (1968); North Carolina Utilities Comm'n v. FCC., 537 F.2d 787 (4th Cir.), cert. denied, 429 U.S. 1027 (1976) ('NCUC I'); North Carolina Utilities Comm'n v. FCC, 552 F.2d 1036 (4th Cir.), cert. denied, 434 U.S. 874 (1977) ('NCUC II').

FN4 The entered Modification of Final Judgment is reproduced in United States v. Am. Tel. and Tel. Co. supra., and parties may refer thereto in formulating their comments in this proceeding. Furthermore, if less than equal access is provided by a BOC, it is permitted to file access tariffs reflecting the lesser cost of such access, Section VIII.F of the MFJ. This BOC tariff filing obligation does not affect the authority of regulators subsequently to prescribe the rates, terms and conditions of such access (or, in the terms of this notice, 'interconnection').

FN5 Carterfone, supra. n. 3.

FN6 Am. Tel. and Tel. Co., 60 FCC2d 939 (1976) ('Piece out'); see also, Am. Tel. and Tel. Co., 71 FCC 1 (1979) ('ARINC').

FN7 Interconnection Arrangements Between and Among Domestic and International Record Carriers, 89 FCC2d 988 (1982) ('Interim Order'), ---- FCC 2d ----, FCC 82-264, released June 11, 1982 ('Rejection Order'), ---- FCC2d ----, 48 Fed. Reg. 12372 (Mar. 24, 1983) ('Store-and-forward and TWX/Telex Conversion').

FN8 E.g., AT&T (Facilities for Use by Other Common Carriers), 52 FCC2d 727 (1975) ('Docket 20099') and Exchange Network Facilities for Interstate Access, 71 FCC2d 440 (1979) ('ENFIAA'). While these proceedings were resolved to some extent through informal carrier negotiation under FCC auspices, it should be noted that subsequent thereto, compensation issues have remained controversial, and we have been almost continuously called upon to interpret their results and to rule on proposed tariffs which affect or change their results. Thus, even where carrier agreements in lieu of direct FCC regulatory intervention have been employed, the net result has largely been one of FCC regulation in any event, with respect to compensation.

Conversely, technical, operational, maintenance and administrative issues have largely been resolved by the affected carriers informally during the course of periodic public meetings among the carriers, under the supervision of the Common Carrier Bureau, see, 52 FCC2d at 733, to address such issues, as they arose in implementation of the Docket No. 20099 and ENFIA settlement agreements.

FN9 Under the MFJ, the divested BOCs are required to establish a single point of contact organization for these emergency services, to coordinate and to direct provision by the BOCs of NSEP services. However, it is unclear how this point of contact organization will relate to planning for administrative mechanisms and standby facilities arrangements involving AT&T and other interexchange carriers, or to such arrangements involving non-BOC Independent telephone companies.

FN10 Thus, we conclude that other planning issues, which are focused primarily on exchange carriers' interconnection offerings, and which are involved in the proposals in this proceeding, are sufficiently related to planning for NSEP capabilities to justify our proposing that the planning addressed herein include NSEP.

FN11 To the extent that exchange services may be involved in the offering of interconnection to subscribers' terminal equipment or private communications facilities, we shall limit our consideration solely to the physical, technical and operational details of such interconnection, and not to the exchange rates themselves, consistent with the provisions of Sections 2(b) and 221(b) of the Act and NCUC I, 537 F.2d at 793-95 and NCUC II, 552 F.2d at 1045-48, supra. n. 3. It is our intent in this proceeding neither to seek to extend, nor to contract, our limited interconnection jurisdiction over exchange offerings which, through interconnection, support the provision of interstate and foreign services.

FN12 Implementation of many aspects of the MFJ is subject to approval by the Commission. It might be noted that the Commission has expressed general approval of the MFJ in its amicus comments to the federal district court during the course of the court's Tunney Act proceeding on the public interest implications of the MFJ. See, United States v. AT&T, 552 F.Supp. at 211. In such circumstances, it is reasonable to explore in this proceeding extension of the overall principles of the MFJ to other carriers (e.g., non-Bell telephone companies) or to other circumstances not specifically addressed therein (e.g., interconnection with non-carrier facilities), subject to the outcome of any FCC approval proceedings on the MFJ itself. The instant proceeding may prove lengthy, and we conclude, consistent with the provisions of Section 4(j) of the Act, that such an approach is warranted to permit this proceeding to proceed to conclusion prior to full implementation of the MFJ.

FN13 E.g., NCUCI and NCUC II, n. 3 supra.

FN14 The term 'LATA' does not appear in the MFJ; it has been used by various parties in their filings with the district court to avoid confusion. What is now generally termed a LATA is defined in Section IV.G of the MFJ as an 'exchange area' or 'exchange'. Absent court approval, such a LATA is confined to the boundaries of a single state, and encompasses contiguous local exchange areas (presumably, in the traditional regulatory sense) which serve common social, economic, and other purposes. With court approval, a LATA may extend across a state boundary (somewhat similar to exchanges under Section 221(b) of the Act). Also, with court approval, a LATA may include multiple standard metropolitan statistical areas (or consolidated statistical areas in the case of densely populated states), but not otherwise. Also, the MFJ utilizes a facilities split between 'class 4' and 'class 5' switching facilities; groups of 'class 5' facilities may be accessed in common for 'access' under the MFJ.

These definitions do not preclude the creation of geographically very large LATAs, and indeed in its filings with the federal district court AT&T had sought to treat whole states as single LATAs, notwithstanding that much communication within such a large LATA would be viewed as intrastate toll service, and not exchange service, under traditional regulatory classifications such as those of Sections 3(r) and 3(s) of the Act. Certain of these were approved by the district court. United States v. Am. Tel. and Tel. Co., No. 82-0192, slip op. at 141-45 (D.D.C. Apr. 20, 1983.)

FN15 AT&T had sought from the district court exemptions from the provisions of Section IV.G of the MFJ to configure certain interstate. LATAs, and in its recent decision addressing AT&T's LATA proposals, the district court has approved many LATAS which cross state boundaries. See, United States v. Am. Tel. and Tel. Co., slip op. at 23-24, n. 13 supra.

FN16 As an example of the circumstances which require such a decoupling, and without our reaching a judgment on the desirability of such an example, AT&T had sought from the district court authority to include an entire state, Delaware, in a Pennsylvania LATA. The FCC has authorized competitive provision of interstate service, which authorization would include service between Delaware and portions of Pennsylvania in this LATA. While the district court has sought to ensure that competitive interexchange service providers are not disadvantaged by this arrangement, which it approved, United States v. Am. Tel. and Tel. Co., slip op. at 72-76, n. 13 supra, the interconnection obligations of the MFJ are addressed generally to provision of interconnection to facilitate inter-LATA service, not intra-LATA service as might be involved in Delaware to Pennsylvania calling. Thus, a 'gap' could be created between the interconnection 'blueprint' of the MFJ and the less detailed existing federal interconnection requirements for such interstate services. Similar such circumstances might arise elsewhere, where portions of states have been included in interstate LATAs, supra n. 14, and interstate service not qualifying for 'exchange' treatment under Section 221(b) of the Act is involved. It is important that our pro-competitive interstate service policies not be frustrated, directly or indirectly, by the failure of the MFJ more explicitly to address such interconnection.

FN17 E.g., Interstate and Foreign Message Service, 56 FCC2d 593 (1975), 57 FCC2d 1216, 58 FCC2d 736, 59 FCC2d 83 (1976), aff'd sub. nom. North Carolina Utilities Comm'n v. FCC ('NCUC II'), supra. n. 3; AT&T (Piece out) and AT&T (ARINC), supra. n. 6; Specialized Common Carrier Services 24 FCC2d 318 (1970), aff'd sub. nom. Washington Utilities & Transportation Comm'n v. FCC, 513 F.2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975), see also, Bell Tel. Co. of Penn. v. FCC, 503 F.2d 1205

(3d Cir. 1974), cert. denied, 422 U.S. 1026 (197); Lincoln Telephone and Telegraph Co., 72 FCC2d 724, 74 FCC2d 196 (1979), 78 FCC2d 1219 (1980), aff'd, 659 F.2d 365 (D.C. Cir. 1981); MCI Telecomm'ns Corp. v. FCC, 561 F.2d 365 (D.C. Cir. 1975), cert. denied, 434 U.S. 1040 (1978) ('Execunet I'), 580 F.2d 590 (D.C. Cir.), cert. denied, 439 U.S. 980 (1978) ('Execunet II'), and Order reproduced in appendix to Lincoln Telephone, 659 F.2d 365, supra. ('Execunet III').

FN18 E.g., Lincoln Telephone and Telegraph Co., supra.; United Tel. Co., 77 FCC2d 1015 (1980).

FN19 The BOCs will have had approximately three years from initial adoption of the MFJ to relatively full implementation, and this strongly suggests that a three year period for the Independents to make similar programming modifications to their existing stored-program control switching facilities is reasonable. We specifically invite comment on the reasonableness of this proposed period, and on whether different periods may be appropriate for different types or units of stored-program control central office switching equipment.

FN20 It is assumed that suppliers of central office switches which are to be newly deployed will be able to create programming to support equal access more expeditiously for new equipment (i.e., in two years) than might be the case for programming modifications to existing switches (i.e., the three year period proposed in the previous subparagraph). Furthermore, it would appear taht such suppliers would have great incentives to do so, if they wish to seek to supply new central office switches to the BOCs. However, we specifically invite comment on the reasonableness of the proposed two year period.

FN21 We recognize that there is wide variability in deployed electro- mechanical central office switching equipment, and in proposing adoption of the principles in subparagraph c. we have sought to differentiate dialing and billing capabilities, to which equal access may be impracticable, from communications channel capabilities (e.g., gain, linearity, noise characteristics, etc.), to which equal access would appear practicable without material modifications. Our guiding principle in phrasing the proposed requirements is that any inequality in the treatment of interexchange carriers must be minimized to the extent practicable. We invite specific comment on our proposed formulation, and upon alternatives which might be more reasonable or more practicable.

FN22 Of course, the BOCs will remain bound by the exception requirements of the MFJ. Furthermore, identification in their tariffs by the BOCs of locations where equal access will not be made available would similarly comport with the requirements of the Communications Act, and for that reason our proposal in this regard is not limited to the Independent telephone companies.

FN23 Furthermore, even currently not all forms of interconnection which have been sanctioned or required by this Commission are prescribed in Part 68 of our rules; forms of interconnection are authorized under the tariffs which are not explicitly addressed in the rules because in certain circumstances it has proven more desirable and flexible to utilize tariffs.

FN24 Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § § 16(b)-(h) (the 'Tunney Act'), the district court examined the public interest ramifications of the settlement agreement between AT&T and the Department of Justice as a preclude to entering the MFJ.

FN25, 26 We believe that two related interconnection offerings should also be made, where appropriate, in access tariffs. First, in circumstances addressed in our AT&T (Piece out) and AT&T (ARINC) decisions, supra. n. 6, AT&T itself is obliged to offer interconnection to its facilities. Upon implementation of the MFJ, to the extent that AT&T might discharge this obligation through the use of interposed exchange facilities provided by the BOCs, we believe the latters' access tariffs should offer such interconnection. To the extent that AT&T may be authorized to provide service directly to subscribers' premises, AT&T's own tariffs should offer such interconnection. Second, the status of resellers under the MFJ is unclear. The MFJ establishes specific exchange access requirements for access by interexchange carriers to the BOCs' facilities, but it is unclear whether resellers are to be treated as carriers for this purpose. To the extent that interconnection is to be offered to resellers, we tentatively conclude that such interconnection be offered in the access tariffs. We invite comment on the foregoing proposals.

FN27 'It might be noted that Commission sanctioning of joint planning by carriers has been sought in a pending petition by the National Telecommunications and Information Administration which predated the structural industry changes addressed in this Notice, see, Petition for Notice of Inquiry and Proposed Rulemaking, Oct. 10, 1980, RM-3781.' A basis was shown in that petition for Commission sponsorship of limited joint planning among carriers even in the absence of the major changes now underway, and, as is discussed below, we believe that there is even more of a basis for limited joint planning now. In view of the substantial changes in the predicate for any such planning, we shall merge the record therein with this proceeding.

FN28 These interconnection obligations have been addressed in the previous sections of this Notice.

FN29 See para. 18, supra.

FN30 See Lavey, Joint Network Planning in the Telephone Industry, 34 Fed. Comm. L.J. 345, 348 (1982) (hereinafter cited as Lavey).

FN31 See para. 16 supra.

FN32 Plan of Reorganization of AT&T in United States v. AT&T at 5 (D.D.C., filed Dec. 16, 1982) (hereinafter cited as Plan of Reorganization). In any event, the divestiture must take place not later than February 24, 1984, in accordance with Section I.A of the MFJ. See also, n. 12 supra. relating to FCC approval.

FN33 See Specialized Common Carrier Services, 24 FCC 2d 318, 333 (1970). It has been noted, as a general matter, that 'freedom of entry and competition [serve] as a device for innovation--for encouraging the development of new and different services and for assuring the optimal development and exploitation of new technology.' 2 A. Kahn, The Economics of Regulation: Principles and Institutions 149 (1971) (footnote omitted). It also has been argued that this general principle applies in the communications industry:

> [T]here are concrete evidences of the contribution competitive innovation can make in communications where it has had an opportunity to work . . .. The revolutionary development in the last decade of microwave and satellite communications, the burgeoning of user-owned attachments and in particular those associated with the use of shared computer facilities . . . have . . . been vigorously pressed not only by

large users and independent entrepreneurs in communications but also, at least with equal vigor, by competing manufacturers of equipment.

Id. at 304 (footnote omitted).

FN34 This Commission has taken notice of this disadvantage of central planning in a different context:

Implicit in the central planning approach to designing and engineering the telephone network is the assumption that the planners know what is best for the customers. However, in the present era of rapid technological change and computerization of communications functions, it is difficult if not impossible for a centralized planning system to detect and respond to the many diverse needs of customers who continually seek to make more efficient use of the telecommunications system.

Economic Implications and Interrelationships Arising From Policies and Practices Relating to Customer Interconnection, Jurisdictional Separations, and Rate Structures (Docket No. 20003), 75 FCC 2d 506, 547 (1980) (discussing the appropriateness of integrated control and planning regarding specialized private line services).

FN35 See para. 59, infra.

FN36 Third Report at paras. 339-44 (establishment of an intra-industry association to carry out tariff filing and pool distribution functions under the access charge system). We have rejected the notion that we lack authority to provide for the establishment of a private association which would engage in joint actions. Third Report at para. 343. We have noted, in addressing the issue of joint planning in an earlier phase of this proceeding, that we have sufficient authority to require exchange carriers 'to acquire facilities and to adopt design criteria that will make interconnection effective.' MTS and WATS Market Structure, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177, 207 (1980).

FN37 Section 222(c)(3)(A) of the Act, 47 U.S.C. § 222(c)(3)(A), required this Commission to convene meetings of IRCs for purposes of negotiating an interconnection agreement.

FN38 Paragraph 16 of the Settlement Agreement provided as follows:

16. Th parties agree that on the second Monday of each month after the effective date of this Settlement Agreement, or on such other day as the parties may from time to time determine, they shall meet under the aegis of the Commission's Common Carrier Bureau to review the progress made in implementing this agreement. In addition, subcommittee meetings between Bell System company and OCC representatives will be held during the Interim Period with respect to technical, engineering, maintenance and test procedures.

American Telephone & Telegraph Co., (Offer of Facilities for Use by Other Common Carriers), 52 FCC 2d 727, 742 (1975). The parties conducted meetings over a period of approximately 15 months and reached agreement regarding principles of interconnection, organization, operations, administrative matters, interconnection facilities and arrangements, and other matters, and pursuant to the settlement agreement and the Commission's acceptance, they have done so on a continuing basis since. See also, Interconnection Between Wireline Telephone Carriers and Radio Common Carriers Engaged in the Provision of Domestic Public Land Mobile Radio Service under Part 21 of the Commission's Rules, 63 FCC 2d 87, 89 (1977).

FN39 Exchange Network Facilities for Interstate Access (ENFIA), 71 FCC 2d 440 (1979).

FN40 Consistent with these mandates, under Sections 214(a) and 214(d), we have sponsored facilities planning by United States international carriers and have accommodated the views of their foreign correspondents through a related consultative process.

FN41 Section 4(i) of the Act, 47 U.S.C. § 154(i), provides that '[t]he Commission may perform any and all acts . . . as may be necessary in the execution of its functions.'

FN42 See note 36, supra.

FN43 See Third Report at para. 346.

FN44 See para. 48, supra.

FN45 See paras. 61, 62, and 64, infra.

FN46 This Commission has taken a similar approach regarding the general area of network planning:

> [P]lanning of the nationwide network has been and remains today primarily a private activity. While . . . we intend to monitor the network to ensure it is not designed in a manner that forecloses entry, technical and design disputes among the different entities who comprise the network largely have been resolved without Commission intervention.

In re Applications of Winter Park Tel. Co. and Orange City Tel. Co., 84 FCC 2d 689, 696 (1981).

FN47 Third Report at para. 345 (citing Fourth Supplemental Notice of Inquiry and Proposed Rulemaking, 90 FCC 2d 135, 150 (1982)).

FN48 See Majority Staff of Subcomm. on Telecommunications, Consumer Protection, and Finance of House Comm. on Energy and Commerce, Telecommunications in Transition: The Status of Competition of the Telecommunications Industry, 97th Cong., 1st Sess. 228 (1981).

FN49 United States v. AT&T, 552 F. Supp. at 171. In 1980, revenues earned by specialized common carriers constituted 1.3 percent of the toll service revenues of the telephone industry, and their plant had 0.5 percent of the value of the gross communications plant of the telephone industry. Lavey, supra note 30, at 367.

FN50 See para. 63, infra, for a discussion of our tentative conclusions regarding the nature of this role.

FN51 We recognize, however, that certain larger Independent telephone companies will perform the dual role of being exchange and interexchange service providers. In present circumstances, however, they would not appear to have sufficient market power to change our belief that the proposed structure is appropriate. Parties may wish to comment on this.

FN52 For the convenience of discussion, our subsequent comments make reference to the 'association' based upon our tentative conclusion that the association created by the Third Report is the proper structure for interconnection planning. These references, however, should not be construed to preclude designation of one or more different entities to carry out these planning functions.

FN53 See, e.g., Maple Flooring Manufacturers Ass'n v. United States, 268 U.S. 563 (1925); United States v. American Linseed Oil Co., 262 U.S. 371 (1923); American Column & Lumber Co. v. United States, 257 U.S. 377 (1921).

FN54 The important role played by communications carriers in connection with NSEP often has been recognized. See Section 1 of the Act, 47 U.S.C. § 151; Section I.B. of the MFJ; H.R. Rep. No. 1252, pt. 1, 96th Cong., 2d Sess. 90 (report on H.R. 6121, Telecommunications Act of 1980) ('It is important and valuable to the Nation that carrier networks be interconnected (or capable of interconnection) and capable of interoperation in emergencies . . ..'); S. Rep. No. 170, 97th Cong., 1st Sess. 52 (1981) (report on S. 898, Telecommunications Competition and Deregulation Act of 1981).

FN55 For an example of the role AT&T has played in meeting national defense needs, see Bell Telephone Laboratories, Inc., A History of Engineering and Science in the Bell System 232-38 (1978).

FN56 See, e.g., In the Matter of MTS and WATS Market Structure, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177, 206-07 (1980). After divestiture an AT&T government communications organization will act as the point of contact between AT&T and the government for NSEP purposes, including NSEP technical standards, NSEP network planning, and all other aspects of AT&T's role (as an interstate regulated entity) in nationwide NSEP planning or exercises. AT&T has indicated that:

> AT&T will retain its network operations center and established NSEP relocation sites, which will continue to perform, among other things, NSEP alerting services with respect to AT&T's network and interconnected carrier networks, if those carriers and the government so desire.

Consolidated Application of American Telephone & Telegraph Company and Specified Bell System Companies, In the Matter of AT&T (Consolidated Applications), No. W-P-C-4955, at 74 (FCC, filed March 1, 1983).

FN57 Section I.B. of the MFJ requires a BOC single point of contact for NSEP purposes. Under the Plan of Reorganization submitted by AT&T, the BOCs will establish a specialized government communications group within the Central Staff Organization in order to comply with this MFJ requirement. The functions of this group will include (1) the development of technical standards for use the BOCs; (2) operation as a single point of contact for alerting BOCs in emergency situations; and (3) cooperation 'with AT&T and its affiliates and other carriers to effectuate NSEP communications requirements . . ..' Plan of Reorganization, supra note 32, at 418.

The Plan of Reorganization describes the manner in which the communications group will coordinate with interexchange carriers and other vendors in the following terms:

[T]he BOCs and the centralized government communications group will cooperate fully with the interexchange carriers and equipment vendors involved to provide efficient service. Specifically, the centralized group will, if the government desires, serve as a point of contact for other carriers and vendors to arrange for the installation, joint testing, maintenance, restoration, repair and all other operational aspects of BOC-provided NSEP services that are interconnected with services provided by other carriers.

Id. at 421. It should be noted that the arrangements described in the Plan of Reorganization do not appear to include coordinated planning and do not appear to involve Independent telephone companies. See Comments of United States Independent Telephone Association on the Plan of Reorganization, at 4 (D.D.C., filed Feb. 16, 1983).

AT&T, in materials filed with this Commission subsequent to the filing of the Plan of Reorganization with the District Court of the United States for the District of Columbia, has alluded to the possibility of coordinated planning between the BOCs and other carriers for NSEP purposes.

[T]he CSO [the central staff organization for the BOCs] would, if requested by the government, act as the point of contract for other carriers to coordinate the installation, joint testing, maintenance, restoration, repair, and all other operational aspects of BOC-provided intra LATA NSEP services that are interconnected with services provided by other carriers and terminal equipment vendors. To effect this coordination, it is assumed that the involved carriers, including the independent telephone companies, would designate NSEP coordinators and would be in communication with CSO's national alert center. Neither the BOCs nor the government communications groups in the CSO will select interexchange carriers or terminal equipment vendors for the government.

Consolidated Application of American Telephone Telegraph Company and Specified Bell System Companies, In the matter of AT&T (Consolidated Applications), No. W-P-C-4955 at 78 (FCC, filed March 1, 1983). The Department of Justice had indicated to the district court that it would require the Plan of Reorganization to be amended to clarify that the central staff organization will have authority to 'require' that the BOCs carry out NSEP activities on a coordinated basis, and that the central staff organization wouldbill and collect from federal agencies on a centralized basis. These changes have been accepted.

FN58 Third Report at para. 344.

FN59 The exchange carrier association is necessarily involved in the collection and sharing of pricing information in connection with the its preparation of access tariffs. Third Report at para. 348. The pricing restrictions we propose to establish here relate exclusively to the planning activities of the association and would in no way constrain or impair the functions established in the Third Report.

FN60 We recognize that the functions of the association in establishing technical interconnection standards, see para. 57, supra, may pose the risk that technical standards might be adopted which indirectly lead to creation of procurement guidelines. That is, technical standards could be fashioned in a way that would tend to favor the facilities and equipment of certain vendors. However, our goal is to delineate the functions of the association and restrictions applicable to its activities in a manner which minimizes this risk, while maintaining the potentially desirable goal of permitting operational problems to be avoided through the use of

appropriate technical standards. We seek comments regarding possible ways in which reconciliation of these goals may appropriately be achieved.

FN61 The Supreme Court, in holding that an industry standard-setting organization is civilly liable under antitrust law for antitrust violations of its agents acting with apparent authority, noted that:

> [A] standard-setting organization like ASME can be rife with opportunities for anticompetitive activity. Many of ASME's officials are associated with members of the industries regulated by ASME's codes . . .. [S]ome may well view their positions with ASME, at least in part, as an opportunity to benefit their employers. When the great influence of ASME's reputation is placed at their disposal, the less altruistic of ASME's agents have an opportunity to harm their employers' competitors through manipulation of ASME's codes.

American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp., 50 U.S.L.W. 4512, 4516 (U.S. May 17, 1982) (footnote omitted). See, Radiant Burners, Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 656 (1961) for a discussion of the unlawfulness of exclusionary standard-setting.

FN62 See Section 708(d) of the Defense Production Act of 1950, 50 U.S.C. App. § 2158(d).

FN63 See Section 708(e)(3)(D) of the Defense Production Act of 1950, 50 U.S.C. App. § 2158(e)(3)(D). Paragraph (1) of subsection (b) of Section 552 of Title 5, United States Code, relates to information classified as nonpublic under Executive orders; paragraph (3) relates to information which is exempted from disclosure by statute; and paragraph (4) relates to trade secrets and commercial or financial information which is privileged or confidential. It should be noted that the exclusions established in Section 708(e)(3)(D) of the Defense Production Act of 1950 embrace only the information described in paragraphs (1) and (3).

FN64 See Section 708(d) of the Defense Production Act of 1950, 50 U.S.C. App. § 2158(d).

FN65 This Commission, in discussing the overall network planning process, has noted that:

> [T]he public is well served when . . . users and constituents of the network also are involved in the planning process. Joint planning introduces more directly the perspective and experience of other responsible entities, bringing to light viewpoints that might otherwise go unnoticed. We expect that a broader planning perspective will lead to the consideration of alternative plans and ultimate improvement of the network.

In re Applications of Winter Park Tel. Co. and Orange City Tel. Co., 84 FCC 2d 689, 697 (1981).

FN66 See para. 48, supra.

FN67 It is useful to note that section II.B.2 of the MFJ requires the BOCs to establish and disseminate 'technical information and . . . interconnection standards.'

FN68 See Section 708(e)(3)(F) of the Defense Production Act of 1950, 50 U.S.C. App. § 2158(e)(3)(F). It should be noted that, in the area of telecommunications network planning, requirements have not been established for the systematic filing of planning decisions. Lavey, supra note 30, at 346.

FN69 See para. 56, supra, for a discussion of whether interexchange carriers should be represented as members of the association.

FN70 Cf. Hearings on S. 898 Before the Senate Comm. on Commerce, Science, and Transportation, 97th Cong., 1st Sess. 445 (1981) (testimony of T. Brophy, Chairman and Chief Executive Officer, GTE Corp.) (informal contacts among telephone companies regarding planning for toll switching and transmission facilities), cited in Lavey, supra note 30, at 378 n.126.

FN71 Third Report at para. 333.

FN72 See para. 59, supra.

FN73 FCC v. RCA Communications, Inc., 346 U.S. 86, 94 (1953). The Court also noted, in the RCA case, that 'encouragement of competition as such has not been considered the single or controlling reliance for safeguarding the public interest.' Id. at 93 (footnote omitted).

FN74 Phonetele, Inc. v. American Tel. & Tel. Co., 664 F.2d 716, 722 (9th Cir. 1981), cert. denied, 51 U.S.L.W. 3533 (U.S. Jan. 17, 1983) (No. 81-2359). We do not find it necessary here to address the question of whether the planning requirements which would be imposed upon exchange carriers under our proposed rules would have the effect of establishing any antitrust immunity for such carriers, although we do note the general principle that '[a]ctivities which come under the jurisdiction of a regulatory agency nevertheless may be subject to scrutiny under the antitrust statutes.' Jarvis, Inc. v. American Tel. & Tel. Co., 481 F. Supp. 120, 123 (D.D.C. 1978) (citing Otter Tail Power Co. v. United States, 410 U.S. 366, 372 (1973)).

FN75 See Telecommunications Reports, Vol. 49, No. 16, at 44 (April 25, 1983), 'Washington Legislative Council Members Move on Group to Set Network Standards.'

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